

Ensuring Trust in Frederick County Government

**Frederick County Ethics Task Force
Final Report**

June 4, 2015

INTRODUCTION

The Frederick County Ethics Task Force (“Task Force”) was appointed by County Executive Jan Gardner on February 18, 2015. The members of the Task Force have diverse backgrounds but a common passion: ensuring that citizens trust their government.

Ethical practices are extremely important in assuring credibility with citizens regarding government decisions that affect how they and their neighbors behave, their financial situations and the opportunities available in their community. With a smaller and smaller percentage of residents actually registered to vote and going to the polls, those chosen to govern must be held to elevated standards that meet not only those who elected them, but the expectations of the entire community.

The Task Force’s charge is explained in detail below, but in a nutshell, the members felt it was this:

- to comprehensively review the complicated pieces that make up local ethics laws and practices that affect the behavior of local officials;
- to determine whether there were shortcomings in their application to today’s reality in Frederick County; and
- to recommend solutions wherever problems were evident.

The Task Force urges Frederick County’s County Executive, County Council, Ethics Commission, and State Delegation to adopt these changes to meet our citizens’ expectations for elected government officials to display behavior of the highest standards.

ETHICS HISTORY IN FREDERICK COUNTY

1982 The first Frederick County Ethics Ordinance and the Ethics Commission was established.

2007 Major changes were made to Frederick County’s Ethics Ordinance by the Board of County Commissioners, including the creation of misdemeanor penalties that were put in place for violation of newly enacted lobbying, financial disclosure, and conflict of interest sections.

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2011 Frederick County was required, as were all Maryland counties and municipalities, to adopt a state Ethics Ordinance reflecting one of two state models, one for small counties or one for large (Frederick County chose a combination of both). The state Public Ethics Law pre-empts several areas of local law (primarily affecting land use decisions) that had previously been addressed in the Frederick County Ethics Ordinance: lobbying (including ex parte conversations), conflict of interest, and financial disclosure. By current interpretation of the Frederick County Attorney's Office, changes to these areas of the state Public Ethics Law can only be made by action of the Frederick County Delegation and approval of the Maryland General Assembly.

At the same time, the Board of County Commissioners eliminated two local sections of the law addressing penalties for two of the state-mandated areas: financial disclosure and conflict of interest.

TASK FORCE CHARGE & PROCESS

County Executive Jan Gardner issued her charge to the Task Force at its meeting on February 18, 2015:

1. Strengthening conflict of interest provisions to ensure that elected and appointed officials do not profit from their positions and that there is not the appearance of conflict of interest.
2. Restoring civil and criminal penalties that were removed from the ordinance or recommending penalties appropriate for serious ethics violations.
3. Adding of a Code of Professional Conduct for elected officials.
4. Improving campaign finance provisions that currently rest in state law by recommending changes either to state or to local law.
5. Granting investigative authority to the Frederick County Ethics Commission.
6. Making recommendations in any other areas the Task Force believes will be in the best interest of serving the public good.

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TASK FORCE MEMBERS

The Task Force consisted of 15 voting members drawn from more than 40 applicants. Some members have had experience as seated members of the Frederick County Ethics Commission; some have career experience in ethics compliance; and some are simply citizens with an interest in ethical practices.

Members: Chair - Linda Norris-Walddt; Vice-Chair - Karl Bickel; Secretary - Craig Hicks; Bud Otis, County Council president and non-voting member; Gwen Romack/Brian Duncan, Ethics Commission liaison/non-voting member; Jo Ann Brown, Donald Foster, Thomas Gill, Jesse Goode, Kevin Grubb, Diana Halleman, Dr. Syed Haque, John Helms, Anne Leffler, Rev. Conrad Link, Nancy Pluhowski, and John Shatto.

PROCESS/PUBLIC OUTREACH

The Task Force, charged with completing its work within 120 days, held public bimonthly meetings alternating on Mondays and Thursdays. When possible, those meetings were broadcast on Frederick County Government TV. The Task Force also had two in-depth public presentations by citizens on areas of the law or practice where change was requested. All Task Force meetings were open to the public and advertised. At all meetings the Task Force allocated time for public comment.

Frederick County's Public Information Officer (PIO) created a webpage on which the Task Force minutes and other documents used during the fact-finding process were listed, and created a public comment email address, ethicscomments@frederickcountymd.gov, for receipt of digital comments. The County's PIO also prepared press releases listing the schedule. Various Task Force members also shared notice of the meetings on social media and spread the word among our various community circles.

Fact Finding: After initial discussion of the Task Force's charge and areas where members heard concerns about shortcomings in ethics law/practices, our approach was to first spend two months studying the complex dovetailing of state and local laws and the Ethics Commission procedures. Each

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meeting was focused on two large areas of interest, which a small subteam of Task Force members researched and brought to the large group. They were: Ethics Commission procedures; Public Ethics Law-lobbying/ex parte conversations; Public Ethics Law - conflict of interest/financial disclosure; Code of Conduct; Enforcement; and methods to strengthen independence of the Ethics Commission.

In May, the Task Force began listing all possible recommendations from the fact-finding discussions with an initial list of more than 60 to consider. The remainder of the month was spent approving, debating, consolidating, and eliminating recommendations with the results contained in this report.

The recommendations are grouped as:

1. Changes to Local Ordinance (must be approved by state Public Ethics Commission and adopted by the County Council).
2. Changes to State Public Ethics Law—Frederick County section (Maryland General Assembly action required).
3. Ethics Commission's Procedures (must be adopted by the Ethics Commission in its Standard Operating Procedures).
4. Executive Branch Procedures (must be budgeted and/or delegated by the County Executive to be handled by the appropriate department/staff).

Section 3: Change to the Ordinance is Needed: Recommendations

Recommendation #1: Investigative Powers

Recommendation

The Ethics Task Force recommends that the Ethics Commission's investigatory powers be expanded to include the authority to require any person to respond under oath to written questions, produce verified copies of records, and attend depositions to answer questions under oath. In order to do this, the Ethics Commission should have the power to authorize the issuance of subpoenas for the attendance of witnesses to testify or to produce other

evidence and it should have the power to administer oaths. A subpoena issued by the Ethics Commission must be able to be enforced judicially.

Rationale

This recommendation echoes a request made by the Ethics Commission in a letter dated January 14, 2015, to County Executive Jan Gardner and further discussed with the Ethics Task Force by representatives of the Ethics Commission. The Ethics Task Force believes that this power is necessary for the Ethics Commission to properly, efficiently, and effectively carry out its duties under the Ethics Ordinance.

Recommendation #2: Restore Criminal Penalties for Conflict of Interest and Financial Disclosure Violations

Recommendation

The Ethics Task Force recommends that the criminal penalties in the Ethics Ordinance be restored to those found in the Ordinance prior to the changes that were made in 2011 by Ordinance #11-26-592. The change in 2011 removed the misdemeanor criminal penalties for violation of the Conflict of Interest provisions and for the Financial Disclosure provisions. The change left only the criminal penalty for Lobbying violations enforceable in the current Ordinance. This recommendation would mean that the violations “shall be a misdemeanor subject to a fine of up to \$1,000 or imprisonment of up to six months or both.”

Rationale

This recommendation echoes a request made by the Ethics Commission in a letter dated January 14, 2015, to County Executive Jan Gardner and further discussed with the Ethics Task Force by representatives of the Ethics Commission. The Ethics Task Force believes there was no basis, when the Ethics Ordinance was changed in 2011, to single out violations of Conflict of Interest and Financial Disclosure provisions for removal of

penalties. The restoration of these penalties will demonstrate to the citizens of Frederick County that the ethical conduct of its elected leaders is important enough to justify criminal penalties for ethics violations.

Recommendation #3: Prohibition of Retaliation

Recommendation

The Ethics Task Force recommends that a section be added to the Ethics Ordinance to protect complainants, those representing complainants, and witnesses who report or are about to report, verbally or in writing, a violation or a suspected violation of the Ethics Ordinance. The County Executive, County Council Members, appointed officials, and County supervisors and employees would be prohibited from discharging, threatening, or otherwise discriminating against a complainant or employee acting on behalf of a complainant or witness, regarding compensation, terms, conditions, location or privilege of employment. These protections would not apply to anyone who knowingly makes a false report.

Rationale

Employees, whether complainants or representatives of complainants, who prepare to bring or bring complaints under the Ethics Ordinance, need to be and deserve to be protected from any and all retaliatory action unless complaints are found to be false. False complaints will be treated as false statements pursuant to the Frederick County Personnel Rules. Likewise, witnesses who participate in an investigation, hearing or inquiry held by the Ethics Commission or in any related court action should also be protected.

Recommendation #4: Expand Financial Disclosure Applicability

Recommendation

The Ethics Task Force recommends that Ethics Ordinance § 1-7.1-6 FINANCIAL DISCLOSURE

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applicability be expanded to include the following:

1. All employees that “serve at the pleasure” of the County Executive.
2. All employees that “serve at the pleasure” of the County Council.
3. All members of the Planning Commission.
4. All members of the Board of Zoning Appeals.

In addition, § 1-7.1-6 should indicate that all those forms filed as a result of § 1-7.1-6 should be posted to the County’s website but that the forms of those added in 1 through 4, above should have home addresses and contact information redacted.

Rationale

The Ethics Task Force has noted that some of the purposes of financial disclosure are:

1. To provide the Ethics Commission, officials, employees, and the public access to documents disclosing possible conflicts of interests.
2. To provide access to documents that demonstrate to the public that financial interests are not hidden and that, generally, officials and employees do not have conflicts of interest.
3. To provide those who complete the form an annual opportunity to review matters that might need some attention to avoid possible conflicts of interest. The Ethics Task Force believes that, given the County’s new charter form of government and given an increase in public attention to important areas of planning and zoning in Frederick County, that it is important and appropriate to increase the classes of individuals subject to Ethics Ordinance § 1-7.1-6 FINANCIAL DISCLOSURE and to provide for the display of financial disclosure forms on the County’s website.

Recommendation #5: Amend Ethics Ordinance § 1-7-1-5. CONFLICTS OF INTEREST
Regarding Sexual or Romantic Relationships

Recommendation

The Ethics Task Force recommends that Ethics Ordinance § 1-7-1-5. CONFLICTS OF INTEREST be amended to expand the definition of conflict of interest using the following or other legally acceptable words that convey the meaning:

If an elected or any other official and an employee, or two elected or other officials, or two employees (referred to hereafter as “Participants”) are having or have had a sexual or romantic relationship, neither participant shall act on, or encourage others to act on, any matter in which the other Participant has an interest. Interest includes, but is not limited to, avoiding discipline, demotion, discharge, reduction in pay or in obtaining another position, increase in pay or other employment benefit.

Rationale

This recommendation echoes a request made by the Ethics Commission in a letter dated January 14, 2015, to County Executive Jan Gardner and further discussed with the Ethics Task Force by representatives of the Ethics Commission. The Ethics Commission recommendation was as follows:

“Adopt standards of conduct for inappropriate personal relationships in the workplace: The County needs to communicate to elected and appointed officials and employees that personal relationships between County officials and employees should not exist when one of the persons in the relationship supervises the other (directly or indirectly) or has influence over the other person's pay, benefits, evaluations, work assignments or other terms or conditions of employment. The Ethics Commission met with the Director of the Division of Human Resources to discuss adding such a policy to the Frederick County Personnel Rules, but those Rules do not apply to elected officials. The standards should apply to all employees and officials, including those who are not subject to the Frederick County Personnel Rules.”

The recommendation from the Ethics Commission followed its Opinion 14-04 after a complaint that an elected official had maintained a personal relationship with an employee in violation of the Ethics Ordinance. The Ethics Commission’s Opinion included the

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following:

“The fact is that this is a matter over which the Ethics Commission has no jurisdiction. A personal relationship such as the one alleged in the complaint would not violate the Ethics Ordinance. For that reason, the Ethics Commission lacks the jurisdiction to pursue the allegations.”

The Ethics Task Force agrees with the Ethics Commission recommendation and believes that when an elected official and an employee or a supervisor and subordinate engage in a voluntary sexual or romantic relationship, that relationship creates the perception that the elected official or supervisor may be advancing the career of the subordinate.

Recommendation 6: Amend Ethics Ordinance to Prohibit the Executive and County Council Members from Contracting for County-run or Subcontracted Projects

Recommendation

The Ethics Task Force recommends that the Ethics Ordinance be amended to add a section to the Ethics Ordinance § 1-7-1-5 CONFLICTS OF INTEREST, to read as follows or to have such legal language as may be appropriate to carry out the intent of the description below:

Prohibition of County Council Members and the County Executive from entering into contractual relationships with Frederick County -

In order to ensure that there is not only no actual conflict of interest but also no appearance of conflict of interest on the part of the County Executive and County Council Members, entering into contracts with Frederick County is strictly prohibited under the following circumstances:

- (a) One or more of the contracting parties is the County Executive or a County Council Member.
- (b) One or more of the contracting parties is a partnership, limited liability partnership or limited liability company or corporation in which the County Executive or County Council Member has any invested capital or owns any interest.

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(c) Further, neither the County nor any party it contracts with when executing any contract between the County and said party, shall knowingly enter into any contract under which the County Executive or a County Council Member or a partnership, limited liability partnership, or limited liability company or corporation in which the County Executive or County Council Member has any invested capital or owns any interest, is a subcontractor.

Rationale

The Ethics Task Force has made this recommendation because it believes that Frederick County is committed to establishing a culture of openness, trust, and integrity in business practices. We believe that our system of representative government is dependent in part upon the people maintaining the highest trust in their elected officials and believe that the people have a right to be assured that the impartiality and independent judgment of elected officials will be maintained. It is evident that this confidence and trust is eroded when the conduct of the County's business is subject to improper influence or even the appearance of improper influence.

How elected officials exercise their fiduciary duties, the appearance of their conduct to the community, and how elected officials' handle of conflict situations affects the public's trust in those who manage their community and public participation in the government.

Whatever elected officials think about their relationships or transactions, it is what the public thinks that matters and that the public is right to make its assumptions considering the information it has. The litmus test for elected officials' behavior is whether a reasonable citizen would question the elected officials' impartiality if the official entered into business contracts with the Frederick County Government.

In fact, most democracies hold their elected officials to much higher standards than the average citizen. Elected officials have special obligations regarding the appearance of impropriety, the appearance of preferential treatment, and the appearance of favoritism calling for them to give up some rights and to make certain sacrifices regarding conducting business with Frederick County. This is necessary to avoid bringing discredit upon or causing unfavorable criticism of Frederick County Government or leading to relationships which might impair public confidence in the integrity of the government.

Recommendation #7: Amend Ethics Ordinance § 1-7-1-10 ENFORCEMENT to Require that the Names of Violators of the Ethics Ordinance be Published in the Document Reporting the Violation

Recommendation

The Ethics Task Force recommends that Ethics Ordinance § 1-7-1-10 ENFORCEMENT be amended to require that the names of violators of the Ethics Ordinance be published in the document reporting the violation. Currently, § 1-7-1-10 ENFORCEMENT (G) states that “A finding of a violation of this chapter by the Commission is public information.” However, the Ethics Task Force recommends that the language be strengthened to ensure that there is no doubt that the names of violators **must** be publicly published so that the citizens of Frederick County not only know the nature of the violation but also the identity of the party or parties adjudicated as being in violation of the Ethics Ordinance.

Rationale

The Ethics Task Force believes that our system of representative government is dependent, in part, upon the people maintaining the highest trust in their public officials and employees, and that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained. For the purpose of guarding against improper influence, the Frederick County Ethics Ordinance spells out a number of circumstances and requirements to implement the County’s Ethics Ordinance. To enforce the Ethics Ordinance, the Ethics Commission hears complaints. When complaints are adjudicated and persons are found to be in violation, it is important for the citizens not only to know the facts of the violation, but to know the person or persons found to be in violation. The Ethics Task Force believes this is especially important if elected officials are found to be in violation. Citizens should have full disclosure in order to be able to judge those officials at the time of future elections.

Recommendation #8: Increase the Number of Positions on the Ethics Commission from Five (5) to Seven (7)

Recommendation

The Ethics Task Force recommends that Ethics Ordinance § 1-7-1-4 ETHICS COMMISSION be amended to increase the number of positions on the Ethics Commission from five (5) to seven (7) and limiting appointments to two consecutive three-year terms.

Rationale

The Ethics Task Force felt that by increasing the number of positions on the Ethics Commission and limiting appointments to two consecutive terms, more appointments would be available to better match the increasing diversity of the Frederick County population. The Ethics Task Force also discussed increasing the number of appointments to increase the expertise of the Ethics Commission members by appointing those with a variety of professional qualifications such as real estate, contracting, procurement, investigations, etc. Finally, it was noted that the Ethics Commission is composed of volunteers. While volunteers strive to attend every meeting, there are occasions when family and business reasons necessitate that a meeting be missed. Increasing the number of positions improves the chances of having a quorum at each meeting and helps insure that the members present can efficiently and effectively attend to the business of the Ethics Commission.

Recommendation #9: Restore Ethics Commission Input into Applications for New Ethics Commission Appointments

Recommendation

The Ethics Task Force recommends that Ethics Ordinance § 1-7-1-4 ETHICS COMMISSION be amended to provide that applications received by the Executive Branch for vacant positions on the Ethics Commission be shared with the sitting Ethics Commission prior to any decision by the County Executive. The sitting Ethics Commission will review the qualifications of the applicants with particular emphasis on skills, knowledge, and

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experience. The sitting Ethics Commission will advise the County Executive on those applicants it believes are most appropriate to recommend for appointment.

Rationale

This recommendation echoes a request made by the Ethics Commission in a letter dated January 14, 2015, to County Executive Jan Gardner and further discussed with the Ethics Task Force by representatives of the Ethics Commission. The Ethics Commission recommendation was as follows:

“In addition to the Ordinance changes, the Ethics Commission also recommends that changes be made to the process used to fill vacant positions on the Ethics Commission. The Ethics Commission believes that its members should be involved in the selection process. Most recently, the Board was not given any information on applicants being considered and was not afforded an opportunity to make recommendations prior to the appointments being made. This was a deviation from the prior practice, which allowed the Ethics Commission to review the resumes submitted, meet with applicants, and make recommendations before the decision was made. The Ethics Commission would like to return to this practice.”

The Ethics Task Force agrees with the Ethics Commission and believes that this procedure should be codified by amendment to the Ethics Ordinance.

Section 4: Standards for Elected Officials in Conducting County Business

The Task Force recommends that Frederick County adopt a Code of Conduct for elected officials who serve the citizens of the County and hold these officials accountable to standards via self-censure if the standards are violated. The Code of Conduct should be made part of the County Council’s Rules of Procedures and also apply to the County Executive.

The purpose of this recommendation is to enhance the public’s trust in its local government and thereby invigorate citizen participation. To advance this purpose, the Task Force believes that elected County officials must exhibit high standards of conduct. The recommendations in this section of the report are intended to articulate the acceptable standard of conduct for elected officials of Frederick County and establish public expectations for their tending to the County’s business on behalf of its citizens.

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- Elected officials shall not represent their personal opinion as the official position of the Frederick County Government unless they have been delegated to do so by the authority of the County Council President or County Executive.
- Elected officials shall not issue orders or directives to subordinates of other elected branches, as per the Frederick County Charter. If and when this should occur, county employees shall report the occurrence to the Director of the Division of Human Resources and no retaliation shall be exhibited.
- Elected officials shall give only truthful and accurate statements.
- The County Council and the County Executive shall strive to provide reasonable and adequate opportunity for the right of all persons to speak at public meetings, as rules of procedure are set down for the County Council and County Executive.
- Elected officials shall not use or direct County staff to engage in personal or political activities on behalf of anyone or any issue/cause.
- Elected officials shall make appointments free of nepotism or favoritism.
- Elected officials shall honor these applicable sections of the Frederick County Personnel Rules as agents of the county:
 - There shall be no unauthorized use, removal, theft or intentional damage to the property of the County or another employee, independent contractor or customer.
 - There shall be no violation of County Ordinances or administrative regulations by the County Council or the County Executive
 - There shall be no use, sale or possession of illegal drugs and/or alcohol on the job.
 - There shall be no falsification of County records.
 - Shall not be under the influence of an illegal drug, a controlled dangerous substance, while on the job.
 - There shall be no endangering the safety of or causing injury to the personnel or the public.
- The Task Force recommends that a section on sexual relationships in the workplace be added to the Frederick County Personnel Rules and that elected officials shall honor it as well as

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County employees. The Task Force believes that an environment where County elected officials and employees maintain clear boundaries between personal and business interactions is important to conducting County business. Although ethical behavior should not prevent the development of friendships or romantic relationships between individuals, it should establish boundaries for relationships that could affect the working environment or impact matters of County governance.

Individuals in supervisory roles are subject to more stringent requirements due to their status, their access to sensitive information, and their ability to influence others. Therefore, the Task Force recommends that County officials and employees who establish a romantic relationship may continue employment as long as the relationship does not involve any of the following:

- Involves a supervisor/subordinate relationship;
- Has the potential for creating an adverse impact on work performance; or
- Creates either an actual conflict of interest or the appearance of a conflict of interest.

If any of these three conditions arise, to avoid harassment or real or apparent preferential treatment of an employee by a County official, supervisor or manager and an employee under that person's direct or indirect supervision who are involved in a sexual or romantic relationship, the relationship must immediately be reported, as described elsewhere in this report, i.e., in Section 3, Change to the Ordinance, Recommendation #5.

- The Task Force is in agreement with the Frederick County Council in its action to adopt the Frederick County Code of Civility into its Rules of Procedures.

Section 5: Changes Recommended to the Maryland Public Ethics Law

Why Amend the Public Ethics Law?

Under the County Commissioner form of government, certain laws affecting only Frederick County were required to be approved by the state legislature, but can now be passed by the County Council. However, some laws are still pre-empted by their origination in State Law. One such law is Maryland Code, General Provisions, § 5-857 et. seq. That law prohibits contributions to and regulates voting by elected officials who receive campaign contributions from land use change applicants; and requires reporting of ex parte communications between elected officials and applicants. The Task Force has recommended changes to this law rather than local ordinances because such changes require

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passage by the state legislature and cannot be easily reversed with a cyclical change in local politics. It is also not clear that a Frederick local ordinance contrary to Maryland Code could be enforced.

Members of the Task Force may be tapped as resources if a committee is formed to work on these recommendations.

Recommendation #1: Pendency: Extending to four years the time to prevent an elected official from receiving contributions and acting on a land use application if campaign contributions received.

Recommendation

Extend the prohibition on campaign contributions to four years (and the subsequent recusal if contributions are received) before an application is filed, in addition to the already defined period of pendency.

Purpose

The intent of this is to inhibit the undue influence and potential “buying” of a decision maker’s vote. The Ethics Task Force felt that current law regarding the pendency of an application should be extended retroactively to remove the temptation for decision makers on boards and commissions who may be positioning for elected office to vote in anticipation of later campaign contributions, to avoid the appearance that a land use change was granted in whole or in part because of potential campaign contributions.

Recommendation #2: Expand land uses covered by affidavit of disclosure/ownership filing

Recommendation

APPROVED FOR RECOMMENDATION TO COUNTY EXECUTIVE/COUNTY COUNCIL FOR DELEGATION BILL:

Increase the scope of current land use applications, including changes in permitted land use, which the disclosure section of state Public Ethics Law, Frederick County, affects, to broaden the types of use. One possible model, which has already passed the General Assembly, is

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Prince Georges' County's section of Maryland's Public Ethics Law (5-833 (d) Definitions, which includes:

A request for:

- ♣ Comprehensive rezoning;
- ♣ Zoning map amendments;
- ♣ Special exceptions;
- ♣ Departures from design standards;
- ♣ Revisions to special exception site plans;
- ♣ Expansions of a legal nonconforming use;
- ♣ Revisions to legal nonconforming use site plans;
- ♣ A variance from the zoning ordinance;
- ♣ Approvals of a comprehensive design plan;
- ♣ Approvals of conceptual site plans;
- ♣ Approvals of specific design plans;
- ♣ A variance from the zoning ordinance filed as a companion case with an application type that is not listed above.

Rationale

Those changes of use considered by boards, commissions, and elected bodies may have protracted pendency (from filing of application through approval and modification during subsequent approval processes) that might occasion individuals voting on those applications to be candidates for office at a later stage in the cases' approval. The intent is to prohibit contributions to individuals who might later be influenced if they should become candidates or elected officials. In short, this measure prohibits contributing to people considering these types of cases who might later be candidates for elected office or actual elected officials. If such contributions are illegally made, the individuals must recuse from voting on these matters.

Recommendation #3: Add to the definition of applicants prohibited from making campaign contributions the employees or agents of land use applicants

Recommendation

APPROVED FOR RECOMMENDATION TO COUNTY EXECUTIVE/COUNTY COUNCIL FOR DELEGATION BILL:

For purposes of prohibited campaign contributions by applicants, as defined in Section 5-858,

add to the definition of applicant (such as those defined in the Prince George's County section of the law):

- i. Employees or family members of employees of the applicant.
- ii. Agents of the applicant in the applicant's case: such as accountants; attorneys; architects; engineers; land use consultants; economic consultants; real estate agents; real estate brokers; traffic consultants or traffic engineers.

Rationale

The range of persons who could benefit financially from the approval of land use changes and applications is wider than that currently covered by Public Ethics Law and can create the appearance of undue influence of public officials by individuals who stand to benefit from those officials' decisions.

Section 6: Recommendations to the Ethics Commission

The Task Force recommends the Ethics Commission adopt a Standard Operating Procedure that is completely documented, clear, precise, defined, and published. The Task Force has found the Standard Operating Procedure does not capture numerous important steps, activities, and thresholds involving Ethics Commission actions. Members of the public and persons who have filed complaints with the Ethics Commission have expressed frustration with the lack of available information which would allow them to understand or fully participate in the process. The purpose of this recommendation is to make Ethics Commission procedures transparent, including referral procedure for potential criminal actions, and to enhance the public's and participant's trust in the Ethics Commission process

Recommendation 1: The Ethics Commission should execute a Memorandum of Understanding with the Frederick County State's Attorney's Office listing, based on history, frequent types of potential criminal allegations, and establish a referral policy and path for investigation and prosecution for each type.

Recommendation 2: Document and publish in clear, defined, and precise language, the complete Ethics Commission Standard Operating Procedure to replace or augment current written procedure. This will also include:

- A step-by-step guide for participants and the public.

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- A description of new information and type of evidence which would justify rehearing an ethics complaint or advisory opinion¹ (*Refer to Appendix*).
- Publishing the Ethic Commission's Standard Operating Procedure on the County's website and making copies available to the public.

Section 7: Recommendations to the County Executive

The Task Force recommends the County Executive adopt the following changes to recordkeeping, lobbying forms, recruitment of potential Ethics Commission members, budget, and the establishment of an Ombudsman. These changes will improve administration in support of the Ethics Commission, provide more information to the public about lobbying activities, fund counsel and investigative services should a conflict of interest arise, provide a resource for the public about the Ethics Commission, and assist in the recruitment of citizens for the Ethics Commission.

Lobbying disclosure, ex parte logs, and other records and reporting duties are currently maintained by the Chief Administrative Officer. These records and duties should be transferred to the County Attorney's Office which serves as staff to the Ethics Commission.

The Task Force found that the Lobbyist Form does not require sufficient detail and current information for the public to understand whom the lobbyist is representing and on which project, and when it comes before a body of decision makers. The Task Force determined that a supplemental form should be filed when the lobbyist comes before a body on a new matter; indicating their intended lobbying activities will provide improved clarity.

Transparency is critically important to build and maintain public trust in government. When procedures are not clear and findings are issued with little public knowledge of the process that led to the findings, public trust may be lost. The Task Force recommends the creation of an Ombudsman as a volunteer or employee to help address this issue. The Ombudsman will serve as a link with the public to respond to complaints and information requests regarding the Ethics Commission, its duties, procedures, and scope of responsibility. The Ombudsman will meet with the Ethics Commission regularly to clarify non-confidential issues, discuss complaints, and provide feedback.

Ethics Commission members past and present have expressed concern that few citizens have shown interest in serving on the Ethics Commission. In addition, the Ethics Commission would also like to expand its expertise by welcoming citizens with experience in specific fields that are not currently represented on the Ethics Commission. To address this issue, the Task Force would like the Ethics Commission to reach out to all parts of the County to recruit potential members and for the County to advertise vacancies with civic and professional organizations and social media outlets.

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Recommendation #1:

Transfer the reporting and cross referencing process of lobbying disclosure, financial disclosure, applicant affidavits, and the ex parte conversation log to the County Attorney's Office (or Ethics Commission staff if appropriate). Ex parte logs should be titled "Ex Parte Conversations With Individuals With An Interest In Pending Council Decisions." These reports will be circulated regularly to the County Executive, County Council, the public, and posted in the annual Ethics Commission report.

Recommendation #2:

Change Lobbyist Form to include more detailed information including the following:

- Lobbyists to indicate "matters on which lobbying will occur" (Listed by application #, type of application, location or other designation as appropriate).
- Lobbyist to update current form with a supplemental document each time the Lobbyist comes before a body on a new matter (a signature will not be required on the supplemental document).

Recommendation #3:

Create a budget for outside counsel for situations when there is an apparent conflict of interest that would prohibit the County Attorney or State's Attorney from representing the Ethics Commission. Conflict of interest may occur when a complaint or advisory opinion is filed involving elected officials. The County Attorney who works for those elected officials and the State's Attorney who works closely with those officials would be placed in a conflict if asked to investigate and perhaps prosecute or refer for prosecution an elected official. These funds may also be directed to investigative services.

Recommendation #4:

Establish the position of Ombudsman (volunteer or employee) to serve as public contact person for inquiries and complaints regarding Ethics Commission jurisdiction, duties, authority, and procedure. The Ombudsman would meet with the Ethics Commission regularly to discuss non-confidential issues, complaints, and provide feedback.

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Recommendation #5:

Expand the recruitment process to enhance the diversity, knowledge, and skills of Ethics Commission candidates. This will include:

- Incorporating the recommendations of the Ethics Commission for candidates with specific subject matter expertise.
- Recruiting at-large citizens who display an interest in ethics as well as those, for example, with an expertise in the legal, real estate, law enforcement, and investigation fields. Additionally, the Ethics Task Force felt it was important to discourage political candidates or those closely affiliated with candidates/elected officials from serving. Though we acknowledge this is unenforceable, we suggest language on the advertisements to the effect of: "To encourage a Commission with as much political independence as possible, those who apply should have no plans to run for elected office in the short term."
- Ethics Commission recruitment presentations conducted throughout the County at least once per calendar quarter.
- Advertising vacancies in appropriate local media as well as civic and professional organizations and social media platforms.
- Tapping the local League of Women Voters to produce a plan for recruitment for the Ethics Commission from civic and professional organizations.

Miscellaneous

Several areas of concern have been raised by the Task Force that do not fall under specific recommendation areas that we want to highlight:

Training:

A disturbing passivity was apparent in ensuring that those most affected by the Ethics Ordinance and Public Ethics Law understand the rules under which they operate. The Task Force believes that more attention to establishing procedures requiring training for candidates, elected officials *immediately after they take office*, county employees and members of boards and commissions (*often the source of new candidates for office*).

Today's technology offers easy and low-cost solutions in the form of webinars that can be accessed conveniently online, with an "e-signature" offered at the end of a brief review/test of the webinar to ensure that the individual has reviewed it. The Task Force highly recommends developing these in-house with the County's IIT/Video Services staff.

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Transparency:

While the Task Force offered several specific suggestions to the Ethics Commission to improve its processes, many, many areas were discussed that were too numerous and frankly, not in its specific purview to direct the Ethics Commission in how to write its procedures.

The Task Force must state that an underlying theme it found in public doubt and comments about the decisions of the Ethics Commission in recent years was based on perception: that the workings of the Ethics Commission are secretive, closed-door procedures. The Task Force strongly urges the Ethics Commission and its staff to assess all of its procedures to:

- a) Inform the press and public (via website, etc.) of its meetings and activities proactively.
- b) Standardize and put in writing more of its procedures, which are currently passed down verbally from Commission to Commission, and make these available to the public in some form.

Definition of Family:

The Task Force recommends expansion and modernization of the definitions of "immediate family," "member of household," and "qualified relative" in the Ethics Ordinance, to account for a broader range of familial and personal relationships that hold the potential for perceived or actual conflict of interest. A review should be conducted by the County Attorney's Office and options presented to the Ethics Commission, County Executive or County Council (whichever is appropriate for the procedure/code item being amended).

CONCLUSION

Frederick County is growing---in its evolution to Charter Government, in its size as one of Maryland's fastest growing counties, and in its outlook as people of increasingly suburban and urban viewpoints relocate within its borders.

An honest, long hard look at the standards to which government officials are held to is in order---and, the Task Force believes, should be continuously reviewed every four to six years to ensure that the community's expectations for the most ethical conduct by elected officials is communicated, practiced, and enforced. The Task Force urges the County Executive and County Council to enact these standards to ensure our community's trust.

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Appendix:

- 1 - Process for Rehearing an Ethics Complaint
- 2 - Frederick County Ethics Commission's Recommendations (*letter dated January 14, 2015*)

Meeting Minutes (*located on the Frederick County Government's Website*)

Special Thanks:

The Ethics Task Force would like to thank the following individuals for their assistance throughout this process:

- *Linda Thall, Senior Assistant County Attorney (Task Force Staff)
- *Robin Santangelo, Public Information Officer
- *Joyce Grossnickle, Administrative Officer
- *The Honorable J. Charles Smith, III, Frederick County State's Attorney
- *Report Writing Committee: John Helms, John Shatto, Tom Gill, Nancy Pluhowski, Craig Hicks, and Linda Norris-Waldt

Reconsideration of Advisory Opinions

Current ordinance reference to advisory opinion requests

§ 1-7-4-1-4. Ethics Commission

(B) The commission shall

(2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of provisions of this chapter to them.

Recommendation

It is recommended that the above portion of the Ethics Ordinance be revised to include the development of procedures and policies addressing reconsideration of advisory opinions.

Rationale for Recommendation

Advisory opinions are provided to the requester to assist them in ensuring that they adhere to provisions of the Ethics Ordinance. Once an advisory opinion is provided it is possible that additional relevant information will come to the attention of the Ethics Commission. When this happens, if the new information could potentially change the advisory opinion, there needs to be a provision for the reexamination of the facts and possible rescinding of or modification of the original opinion.

Recommended Procedure

When new information is brought to the attention of the Ethics Commission that could potentially change the Commission's position on a previously decided advisory opinion, the following procedure shall be followed.

- The new information will be examined by the Commission and if the majority of Commission members agree, there will be a reconsideration of the advisory opinion.
- In the case of a reconsideration, the original advisory opinion shall be posted on the Ethics Commission's website along with an announcement that it will be under reconsideration with the date, time, and location of the meeting where the new information will be examined.
- The requester of the original opinion shall be notified that a reconsideration is taking place and that the reconsideration could impact the previously rendered advisory opinion.
- The requester of the original opinion will be advised what the new information is that has prompted the reconsideration.
- The new information will be presented during a public meeting of the Ethics Commission.
- The requester of the original opinion will be advised of the date and time of the Ethics Commission meeting where the new information is to be presented and will be afforded the opportunity to comment.
- The Ethics Commission will meet in closed session to discuss the new information, the original requester's comments and render a decision on whether to rescind the advisory opinion, modify the advisory opinion or let the opinion stand.

- The requester of the original opinion as well as anyone providing information that prompted the reconsideration will be notified in writing of the commission's decision regarding the reconsideration.
- The results of the reconsideration will be posted on the Ethics Commission's website.



FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION
Office of the County Attorney

Jan H. Gardner
County Executive

Gwen K. Romack, *Chairman*

APPENDIX 2

January 14, 2015

Jan H. Gardner, County Executive
Winchester Hall
12 East Church Street
Frederick, MD 21701

Re: Recommended changes to the County's Ethics Ordinance

Dear County Executive Gardner:

The Ethics Commission recently completed a review of the County's Ethics Ordinance and the ethics laws in several other Maryland counties. As the result of its review and discussions, the Ethics Commission recommends that the Frederick County Ethics Ordinance be amended. These amendments would expand the investigatory powers of the Ethics Commission, strengthen the penalty provisions in the Ordinance, and authorize the Commission to hire independent legal counsel when the County Attorney's Office has a conflict of interest precluding that Office from assisting the Ethics Commission. The Ethics Commission also recommends adoption of standards of conduct for all elected and appointed officials and employees to address inappropriate personal relationships in the workplace.

Expand the Ethics Commission's investigatory powers: In order to carry out its duty to resolve complaints against persons subject to the Ethics Ordinance, the Ethics Commission, or an attorney or investigator acting on its behalf, needs to have the authority to require any person to respond under oath to written questions, produce verified copies of records and attend a deposition to answer questions under oath. The Commission should also have the power to authorize the issuance of summonses and subpoenas and administer oaths.

Strengthen the penalty provisions in the Ethics Ordinance: In addition to the penalties in the existing Ordinance, the Commission recommends making violations of the Ordinance a misdemeanor subject to a fine of up to \$1,000 or up to 6 months imprisonment, or both. At present, this penalty is only available for violation of the lobbying provisions in the Ordinance. This change would restore a penalty provision contained in the 2007 Ethics Ordinance.

The Commission also recommends adding a penalty provision to permit the County to initiate legal proceedings to recover damages, property, and the value of anything received by any person in a transaction that violates the Ordinance's conflict of interest provisions. Consideration should also be given to allowing a County taxpayer to file a legal action on behalf

of the County when the County Attorney declines to file an action within a specified period of time. The Court should be given the authority to award a substantially prevailing party reimbursement for court costs and litigation expenses, including a reasonable attorney fee.

Authorize outside counsel for the Ethics Commission: The County Attorney is the legal advisor to the Ethics Commission. That representation generally works without problems. There are situations, however, where the County Attorney's Office may have a conflict of interest in representing the Ethics Commission. This is most likely to arise when the Ethics Commission receives a complaint alleging a violation of the Ethics Ordinance by an elected official. Given the fact that the County Attorney's Office provides legal representation to the County Executive and the County Council and the fact that the County Attorney serves at the pleasure of the County Executive, the potential for a conflict of interest exists. When the Ethics Commission or the County Attorney determines that there is a conflict of interest, the Ethics Commission needs to be able to obtain independent legal counsel. To facilitate this, the Ethics Commission suggests amending the Ordinance to specifically authorize the Ethics Commission to retain legal services from persons outside the Office of the County Attorney when the Ethics Commission finds that this is necessary and the County Council appropriates sufficient funds to cover the cost of the legal services.

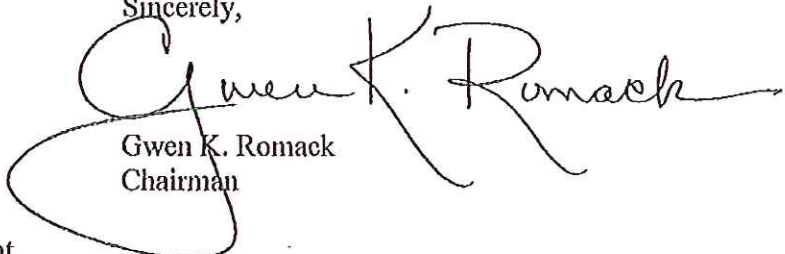
Adopt standards of conduct for inappropriate personal relationships in the workplace: The County needs to communicate to elected and appointed officials and employees that personal relationships between County officials and employees should not exist when one of the persons in the relationship supervises the other (directly or indirectly) or has influence over the other person's pay, benefits, evaluations, work assignments or other terms or conditions of employment. The Ethics Commission met with the Director of the Division of Human Resources to discuss adding such a policy to the County Personnel Rules, but those Rules do not apply to elected officials. The standards should apply to all employees and officials, including those who are not subject to the Personnel Rules.

In addition to the Ordinance changes, the Ethics Commission also recommends that changes be made to the process used to fill vacant positions on the Ethics Commission. The Ethics Commission believes that its members should be involved in the selection process. Most recently, the Board was not given any information on applicants being considered and was not afforded an opportunity to make recommendations prior to the appointments being made. This was a deviation from the prior practice, which allowed the Ethics Commission to review the resumes submitted, meet with applicants, and make recommendations before the decision was made. The Ethics Commission would like to return to this practice.

Jan H. Gardner, County Executive
January 15, 2015
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Thank you for your consideration of these recommendations for improvement to the County Ethics Ordinance.

Sincerely,



Gwen K. Romack
Chairman

cc: Bud Otis, County Council President
John S. Mathias, County Attorney
Linda B. Thall, Senior Assistant County Attorney